

1967 *Present : Abeyesundere, J., and Siva Supramaniam, J.*

E. W. BALASOORIYA, Petitioner, *and* **MUNICIPAL COUNCIL, KURUNEGALA**, Respondent

S. C. 1/66—D. C. Kurunegala, 2278/Spl.

Housing and Town Improvement Ordinance—Sections 5, 16, 88—Order made by Commissioner of a Municipal Council refusing to approve a building plan—Appeal to District Court under s. 16—Vacation of office by the Municipal Commissioner pending the appeal—Whether Municipal Council can be substituted in his place—Municipal Councils Ordinance, s. 14 (8).

Where, pending an appeal under section 16 of the Housing and Town Improvement Ordinance from an order made by the Commissioner of a Municipal Council refusing to approve a building plan, the Municipal Commissioner vacates office, the proper party to be substituted in his place is his successor in office and not the Municipal Council.

CASE stated by the District Court, Kurunegala, for the opinion of the Supreme Court.

E. S. Amerasinghe, with *Fritz Kodagoda*, for the petitioner.

No appearance for the respondent.

May 26, 1967. ABEYESUNDERE, J.—

The District Court of Kurunegala is the tribunal under section 88 of the Housing and Town Improvement Ordinance to hear and determine an appeal from an order made by the Commissioner of the Municipal Council of Kurunegala refusing to approve a building plan. Mr. E. W. Balasooriya of Kurunegala had made an application to the Commissioner of the Municipal Council of Kurunegala for the approval of a building plan and the Commissioner had by letter dated 24th April, 1965, refused to approve that plan. Thereupon the applicant appealed to the District Court of Kurunegala from the order of the Municipal Commissioner. The latter filed objections and also informed the District Court that he had vacated the office of Municipal Commissioner, Kurunegala, with effect from 17th October, 1964. The applicant then applied to the District Court for the substitution of the Municipal Council of Kurunegala in place of Mr. W. E. de Alwis who had vacated the office of Municipal Commissioner, Kurunegala. The Municipal Council filed objections to the proposed substitution and after inquiry the learned District Judge made order on 24.8.65, allowing the substitution. Thereupon the Municipal Council applied to the District Court for the statement of a case for the opinion of the Supreme Court on the question of law whether it was legally correct or competent to the District Court to order the substitution of the Municipal Council of Kurunegala in place of the original respondent for the prosecution of the appeal of the appellant above mentioned under section 16 of the Housing and Town Improvement Ordinance. The learned District Judge made order on 11th November, 1965, refusing the application of the Municipal Council. Thereafter the Municipal Council made an application to the Supreme Court for an order on the District Court to state the aforesaid case for the opinion of the Supreme Court, and that application was allowed by the Supreme Court. A case has now been stated for the opinion of this Court by the learned District Judge.

Under section 5 of the Housing and Town Improvement Ordinance it is the Mayor of the Municipal Council of Kurunegala who is empowered to make orders on applications for approval of building plans. Acting under Section 14 (S) of the Municipal Councils Ordinance, the Mayor of the Municipal Council of Kurunegala, with the consent of that Council, delegated to the Municipal Commissioner, Kurunegala, with effect from 6th April, 1964, his powers under section 5 of the Housing and Town Improvement Ordinance. Mr. W. E. de Alwis, Municipal Commissioner, Kurunegala, exercising the powers delegated to him as aforesaid, made order by his letter dated 24.4.1964 refusing to approve the building plan submitted by the aforesaid Mr. E. W. Balasooriya. In the appeal preferred to the District Court of Kurunegala by Mr. Balasooriya the respondent was Mr. W. E. de Alwis, Municipal Commissioner, Kurunegala. When the latter vacated the office of Municipal Commissioner, Kurunegala, it was his successor in office who was the proper person in his official capacity to have been substituted in place of Mr. W. E. de Alwis. The

learned District Judge has misdirected himself in considering that the Municipal Council of Kurunegala is the proper party to be substituted in place of Mr. W. E. de Alwis. The Municipal Council has no power under the Housing and Town Improvement Ordinance to deal with applications for the approval of building plans and is therefore not a necessary party for the hearing and determination of Mr. Balasooriya's appeal under Section 16 of the Housing and Town Improvement Ordinance. Our opinion is that the substitution of the Municipal Council of Kurunegala which has been ordered by the learned District Judge is contrary to law. We therefore set aside the order of substitution made by the learned District Judge on 24.8.65 and direct the District Court of Kurunegala to substitute the holder for the time being of the office of Municipal Commissioner, Kurunegala, in place of Mr. W. E. de Alwis.

In this case we notice that Mr. W. E. de Alwis, Municipal Commissioner, Kurunegala, in his letter to Mr. Balasooriya refusing to approve Mr. Balasooriya's building plan has stated that the Municipal Council of Kurunegala at a special meeting held on 16.4.64 decided to refuse the approval of Mr. Balasooriya's building plan and he has also stated in that letter that he was acting for and on behalf of the Municipal Council of Kurunegala. In view of the aforesaid facts it is not surprising that Mr. Balasooriya was misled to believe that the authority who had been responsible for the refusal to approve his building plan was really the Municipal Council of Kurunegala and had accordingly applied to the District Court for the substitution of the Municipal Council of Kurunegala in place of Mr. W. E. de Alwis who had vacated the office of Municipal Commissioner, Kurunegala. In view of these circumstances we do not award the Municipal Council of Kurunegala costs of the proceedings in this Court.

SIVA SUPRAMANIAM, J.—I agree.

Order set aside.
